

***United States Court of Appeals
for the Second Circuit***



APPELLEE'S BRIEF

BPLS 8-2
74-2003

To be submitted

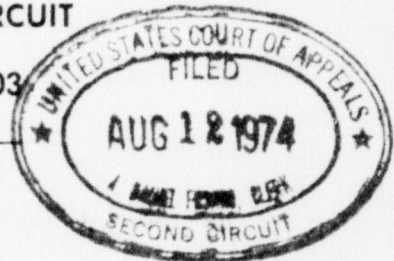
United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 74-2003

IN RE
FELIPE SADIN,

Contemnor-Appellant.



ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES OF AMERICA

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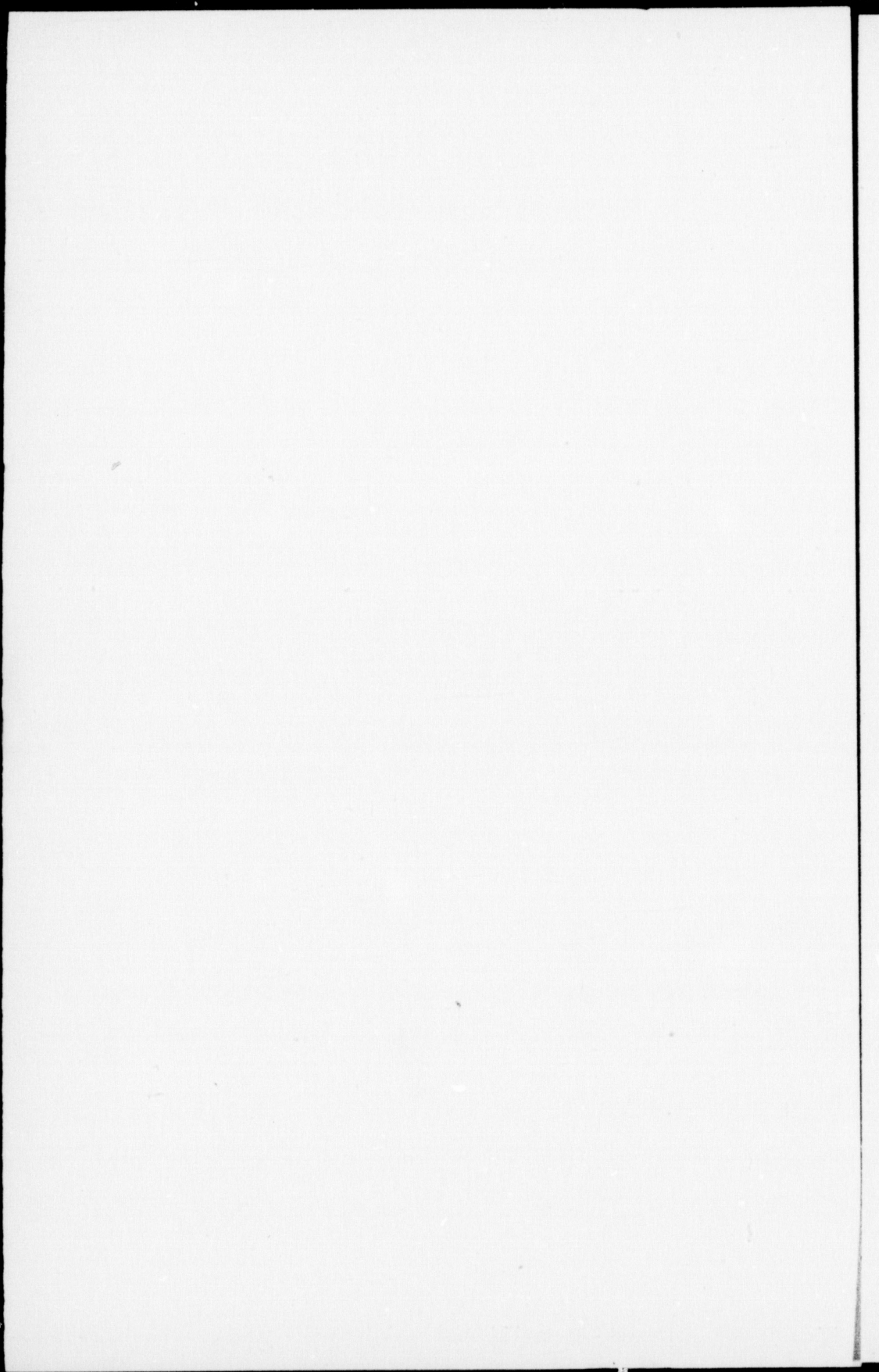


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Preliminary Statement

Felipe Sadin appeals from the judgment and order of the United States District Court for the Southern District of New York (Duffy, J.), filed July 17, 1974, committing him pursuant to Title 28, United States Code, Section 1826 (Recalcitrant Witnesses) for his refusal to answer questions before the August 1973 Special Grand Jury after having been granted immunity. On July 17, 1974, the Court below ordered Sadin confined for the term of the Grand Jury, or until he should purge himself of his contempt by answering the questions put to him before the Grand Jury, but in no event was such confinement to exceed eighteen months.

On July 19, 1974, Sadin's motion for reconsideration and reargument was denied. Transcript of July 19, 1974 Hearing (hereinafter "7/19/74 Tr."), p. 36. Upon Sadin's application for a stay of sentence pending appeal, Judge Duffy released Sadin on his own recognizance during the pendency of this appeal. (7/19/74 Tr. 36-37, 44)

Statement of Facts

Felipe Sadin was charged in Indictment 74 Cr. 381, filed in the Southern District of New York on April 11, 1974, with conspiracy and a substantive violation of the Federal Narcotics Laws. Title 21, United States Code, Sections 812, 841 and 846. Pursuant to Rule 20 of the Federal Rules of Criminal Procedure, Sadin pleaded guilty to the indictment in the Northern District of Ohio on June 28, 1974.* Thereafter, on July 9, 1974, Sadin pursuant to subpoena appeared before a Federal Grand Jury sitting in the Southern District of New York. At that time, Sadin stated that he was represented in the Ohio proceedings by Robert Kaplan, Esq. of Toledo, Ohio and that he had conferred with Mr. Kaplan regarding his appearance before the Grand Jury. (7/9/74 Gr. J. Tr. SA 1-2).** Thereafter, Sadin refused to answer any questions put to him and stated "I'm going to refuse to answer any questions, or all questions." (7/9/74 Gr. J. Tr. GH-2).

* On July 31, 1974, Sadin was sentenced by the United States District Court for the Northern District of Ohio to a term of five years imprisonment pursuant to Title 18, United States Code, Section 4208(a)(2). Contrary to the statement in Sadin's Brief on pages 3 and 22, the United States Attorney's Office for the Southern District of New York did nothing whatever with respect to the date of Sadin's sentence in Ohio. The Court there originally set down the date of Sadin's sentence for July 26, 1974, but at Sadin's attorney's request, adjourned the sentence date to July 31, 1974.

** The conclusory and cleverly worded affidavit of Robert Z. Kaplan, Esq., presented as part of Sadin's appendix on appeal, at no time denies that Sadin had consulted with, and had been advised by, Mr. Kaplan in connection with Sadin's July 9 and July 17 appearances. Moreover, neither the existence of Mr. Kaplan's affidavit nor the substance of its contents were ever communicated to Judge Duffy.

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Sadin was then brought before the Part I Judge, the Honorable Robert J. Ward, United States District Judge, where he invoked his Fifth Amendment privilege.* Thereafter, Sadin's appearance before the Grand Jury was then adjourned to July 17, 1974.

Sadin appeared on July 17, 1974 before the August 1973 Special Grand Jury pursuant to subpoena. After taking the oath Sadin was immediately advised of the nature of the investigation and of his rights as follows:

"Q. Mr. Sadin, my name is Steven Schatten. I am an Assistant United States Attorney in the Office of Paul J. Curran, United States Attorney for the Southern District of New York. You are appearing today before the August 1973 Special Grand Jury, which is investigating alleged violations of the Federal narcotics statutes, including violations of Title 21 of the United States Code, Sections 810 (sic) [812], 841 and 846. Do you understand that? A. Yes.

"Q. I want to advise you in this connection that you have a constitutional right to refuse to answer

* Sadin's Brief, pp. 4-5 conveys the impression that the Assistant United States Attorney had incorrectly advised Judge Ward that Sadin had offered no reason for his refusal to testify in the Grand Jury on July 9, 1974. The relevant portion of the July 9, 1974 Grand Jury proceeding is as follows:

"Q. Do you know a man named Hugo Curbello? A. I refuse to answer any questions.

"Q. What is the reason that you refuse to answer? A. I have no reason but I do not want to answer any questions.

* * * * *

A. I pleaded guilty and I believe I have the right to refuse.

* * * * *

"Q. What is the basis for your refusal? A. I don't know nothing, I refuse" (7/9/74 Gr.J. Tr. GH-1).

any of my questions provided that you have just cause to refuse to answer questions. I want to further advise you that you have a right to consult with an attorney in connection with this Grand Jury proceeding and to have that attorney waiting outside this Grand Jury room. You understand that? A. Yes.

"Q. I want to further advise you that, if you do not have the funds to retain an attorney, an attorney can be appointed to represent you and you would not have to answer any questions before that attorney is appointed and you consult with him. You understand that? A. Yes.

"Q. I understand that you have retained a Mr. Kaplan in connection with this Grand Jury proceeding, is that correct? A. Yes.

"Q. And you have consulted with him in connection with your testimony last week, is that correct? A. Yes.

"Q. And you have consulted with him in connection with your testimony before this Grand Jury today, is that correct? A. Yes." (7/17/74 Gr. J. Tr. SA-1-SA-2).

Sadin then furnished his address and admitted that he had pleaded guilty in the Northern District of Ohio to violating the Federal Narcotics Laws in connection with a November 7, 1972 transaction. Thereafter, claiming his Fifth Amendment privilege, Sadin refused to answer any questions put to him by the Assistant United States Attorney, including questions as to whether he knew five named individuals and whether he had ever engaged in a narcotics transaction with each of these individuals. (7/17/74 Gr. Jr. Tr. SA-3-SA-4). He also refused to answer these questions when so directed by the Foreman of the Grand Jury.

A short time thereafter, the Honorable Kevin Thomas Duffy, United States District Judge, then sitting in Part I, granted Sadin immunity pursuant to Title 18, United States Code, Sections 6002 and 6003 in connection with his Grand Jury testimony. Sadin was then recalled before the Grand Jury and the immunity order was read and translated for him. Sadin stated that he understood the order. Sadin was then advised that if he refused to answer any questions, he could be subject to imprisonment pursuant to the civil contempt statute, Title 28, United States Code, Section 1826, and subject to criminal prosecution.* He persisted in his refusal to answer any question relating to the narcotics investigation then being conducted, including whether he knew the five named individuals and whether he had ever engaged in a narcotics transaction with them.

Sadin was then brought before Judge Duffy in Part I, where on the undisputed record it was established that Sadin once again had refused to testify. Judge Duffy at that time advised Sadin that if he refused to answer questions before the Grand Jury without good cause he could be summarily confined for the life of the Grand Jury until February 1975. (7/17/74 Ct. Hearing Tr. EJC-3). Sadin responded by expressing his refusal to testify. Thereafter, in answer to the Court's questions, Sadin stated that he had conferred with an attorney regarding his appearance and that he knew exactly what he was doing. (7/17/74 Ct. Hearing Tr. EJC-4). Sadin was then ordered confined until he should decide to testify or for the life of the August 1973 Special Grand Jury, including extensions, but in no event was such confinement to exceed 18 months. Prompt-

* Sadin's contention that he was "misinformed" that his failure to testify before the Grand Jury could result in criminal prosecution is without merit. Title 18, United States Code, Section 401; Rule 42(b), F.R.Cr.P.; *United States v. Reide*, 494 F.2d 644 (2d Cir. 1974); see *United States v. Harris*, 382 U.S. 162 (1965).

ly thereafter, Judge Duffy directed that a Spanish-speaking attorney be assigned to represent Sadin and that Sadin be afforded a prompt opportunity to purge himself of the contempt. Helena Pichel Solleder, Esq., a Spanish-speaking attorney, was promptly assigned and conferred with Sadin on that day.*

On July 19, 1974, the Court held a reargument hearing at which Sadin, Mrs. Solleder and the Grand Jury reporter were in attendance (7/19/74 Ct. Hearing Tr. 19-45). Sadin's counsel requested Judge Duffy to reconsider his contempt order and the Judge agreed (7/19/74 Tr. 12-13). Counsel claimed before Judge Duffy, as she does on appeal, that Sadin had not been adequately advised of his right to counsel at the prior proceedings. This contention was laid to rest at the July 19 hearing by testimony that Sadin had been advised by the Assistant United States Attorney concerning his right to the assistance of counsel and right to appointed counsel and by Judge Duffy's noting that, at the July 17 hearing, Sadin had told him that he had consulted an attorney (7/19/74 Tr. 23, 24, 28-29). Judge Duffy also asked counsel whether Sadin had had any just cause for his previous refusal to answer questions before the Grand Jury, and counsel responded that she knew of none (7/19/74 Tr. 33). Judge Duffy also asked Sadin whether he was continuing in his refusal to answer the questions put to him before the Grand Jury and whether he had any just cause for his refusal, but Sadin refused to respond "by advice of counsel" (7/19/74 Tr. 35). Judge Duffy then repeated his finding of contempt and order of commitment (7/19/74 Tr. 36).

* Sadin's brief at 1 states that there is no dispute that Sadin had not been represented by counsel "actually present" during the contempt or Grand Jury proceedings. While this claim is technically correct, Mr. Sadin's testimony in the Grand Jury and his statements before Judge Duffy make it clear that he had conferred with and had been advised by Robert Z. Kaplan, Esq. of Toledo, Ohio, with respect to both of his appearances and that he knew and understood the nature of the proceedings.

** At the outset of the July 19 hearing, the Assistant United States Attorney suggested to the Court and to defense counsel that the Government was prepared to take Sadin before the Grand Jury that very afternoon to give him an opportunity to purge himself of contempt (Tr. 15).

ARGUMENT

POINT I

Sadin was not deprived of liberty without due process of law.

A. Sadin was not denied his right to assistance of counsel.

Sadin claims that he was deprived of his right to counsel in the Grand Jury and at subsequent stages of the proceedings. It seems clear, however, that proper attention was paid to his right to counsel by both Judge Duffy and the Assistant United States Attorney on July 17 and that even assuming *arguendo* that there may have been a defect in the July 17 proceedings, any such defect was clearly cured when Judge Duffy reconsidered the contempt issue two days later, with Sadin and his appointed attorney both in attendance.

It is clear that there is a right to counsel at a civil contempt proceeding. The Ninth Circuit has flatly held that an indigent witness is entitled to appointed counsel at such a proceeding, while at the same time conceding the absence of any authority for the proposition. *United States v. Sun Kung Kang*, 468 F.2d 1368 (9th Cir. 1972). In this Court, *United States v. Handler*, 476 F.2d 709 (2d Cir. 1972), while distinguishing *Sun Kung Kang* on its facts, agrees with its holding. See also *In re Kilgo*, 484 F.2d 1215, 1221 (4th Cir. 1973). Cf. *Argersinger v. Hamlin*, 407 U.S. 25 (1972).

However, this case is entirely different on its facts from *Sun Kung Kang*. There a request for appointed counsel by an indigent was refused by the District Court. Here Sadin had retained his own counsel with whom he had con-

sulted prior to his Grand Jury appearances and whom he could have reached on the telephone had he wished. Cf. *United States v. Masullo*, 489 F.2d 217, 223 (2d Cir. 1973). On July 17 Judge Duffy brought the matter of representation up with Sadin before holding him in contempt, and Sadin told him that he had consulted a lawyer in connection with his Grand Jury appearance and that he knew exactly what he was doing. Moreover, prior to questioning Sadin before the Grand Jury that day, the Assistant United States Attorney had exhaustively advised him of his right to the assistance of counsel and his right to appointed counsel if indigent. No request was made by Sadin at any time either before the Grand Jury or before Judge Duffy for an opportunity to consult his attorney or to have him present. And, while Judge Duffy did appoint counsel to represent Sadin after holding him in contempt, it is by no means clear that this was necessary, since Sadin was already represented by counsel,* was apparently not indigent, and never requested the services of appointed counsel. *De La Fe v. United States*, 413 F.2d 543, 544 (5th Cir. 1969). Indeed, it is clear that Judge Duffy "... conscientiously sought to strike a balance between the court's interest in commanding respect for the judicial process and the witness's right to procedural due process." *United States v. Marra*, 482 F.2d 1196, 1200 (2d Cir. 1973). In *Marra*, a criminal contempt proceeding, this Court held that reversal was warranted because the District Court's had proceeded summarily under Rule 42(a) of the Federal Rules of Crim-

* Sadin makes much of the fact that his Ohio attorney was not in New York and offers an affidavit, already discussed, from that attorney saying he only "represented" him in the criminal proceedings in Ohio and not before the Grand Jury in the Southern District of New York. It seems clear that he had, however, permitted Sadin to consult him about his Grand Jury appearances here, and it seems doubtful, if the affidavit accurately states the facts, that a defense attorney should consult or counsel a prospective Grand Jury witness but not "represent" him.

inal Procedure. The Court's favorable remark was prompted by the fact that Judge Motley, who held the recalcitrant witness in summary *criminal* contempt with no lawyer appearing for him, had given Marra "... the opportunity to seek the advice of independent counsel . . .", *id.* at 1200, which Sadin clearly had before his appearance on July 17 and could have had thereafter had he asked for it. Moreover, in *Marra*, the Court suggested that on the facts there the trial judge should have proceeded under Section 1826 of Title 28, just as Judge Duffy did here. *Id.* at 1202.

Moreover, it is obvious therefore that Sadin was not prejudiced by any even arguable denial of his right to counsel on July 17. In fact, by appointing a Spanish-speaking attorney for Sadin, though he had not made even the slightest showing of indigency,* though Sadin had not requested counsel and though Sadin had retained his own counsel in Ohio,** Judge Duffy afforded Sadin more than he was entitled to.***

* In fact, Sadin has been employed as an inspector for machinery for automobiles (7/19/74 Tr. 38).

** A fundamental distinction between this case and such cases as *United States v. Sun Kung Kang*, 468 F.2d 1368 (9th Cir. 1973) and *Argersinger v. Hamlin*, 407 U.S. 25 (1971) is that in each of those cases the witness or defendant was an indigent and in the former, the witness had requested counsel. No such showing has been made here.

*** Sadin's apparent contention that because Ohio counsel was 600 miles away he would be unable to consult with such counsel overlooks the fact that Sadin had conferred with him in connection with both Grand Jury appearances. Since Sadin apparently had the wherewithal to retain Ohio counsel, and no showing is made that he could not easily have arranged to have Ohio counsel come to New York or have Ohio counsel find New York counsel, it seems apparent that for whatever reason, including a possible dilatory motive, Sadin contented himself with proceeding in the fashion that he did, having been made fully aware of exactly what he was doing (7/17/74 Ct. Hearing Tr. EJC-4).

Finally, even assuming *arguendo* that counsel should have been present at the July 17 contempt hearing, reversal of the order below is only warranted upon a showing of prejudice. *United States v. Handler, supra*, 476 F.2d at 715 n. 7. The lack of any prejudice whatsoever to Sadin by reason of the absence of counsel at the July 17 hearing is clearly established by the proceedings on July 19, which amounted to a consideration *de novo* by Judge Duffy of the contempt, with Sadin present and assisted by counsel. At that time Judge Duffy asked whether Sadin had any "just cause" in refusing to answer and whether he was prepared to purge himself, the only two questions of any importance in making a contempt finding under Section 1826. Sadin's counsel acknowledged that there was no just cause, and she refused to let Sadin state whether he would purge himself. Accordingly, the Court adhered to its order of contempt. Had counsel been present at the July 17 hearing, it is inconceivable that the result would have been different.

B. Sadin was afforded adequate notice of the Grand Jury proceedings and of the contempt hearing.

At the outset Sadin makes the contrived and confusing argument that, because his native tongue is Spanish, he was not notified of the nature of the July 17 Grand Jury proceeding because he was served with a subpoena written in English. In the light of Sadin's statements in the Grand Jury on July 9 and July 17 that he had conferred with Ohio counsel about both appearances and his statement before Judge Duffy to the same effect and that he knew exactly what he was doing, it strains credulity to argue, as Sadin does, that he did not know the nature of the Grand Jury proceeding. Moreover, as the transcripts of each of his Grand Jury appearances attest, Sadin was furnished with notice advising him of the nature of the Grand Jury investigation being conducted. Moreover, the adequacy and sufficiency of the notice is confirmed by the

fact that Sadin travelled from Ohio on two occasions to arrive at the appointed time and place in response to the Grand Jury subpoenas.

Sadin's citation of *United States v. Harris*, 334 F.2d 460 (2d Cir. 1964), *rev'd on other grounds*, 382 U.S. 162 (1965) (a criminal contempt case) actually cuts against his position. In *Harris*, the notice of the nature of the Grand Jury investigation then being conducted was furnished to defendant by a subpoena and by the Government counsel. 334 F.2d at 462-463. In affirming the contempt conviction, this Court upheld the propriety of such notice. The notice of the Grand Jury proceedings furnished here was equally, if not more, adequate, since Sadin also had received oral notification in *Spanish* through the interpreter at his July 9 appearance more than one week before and had conferred with his retained counsel.

Sadin's statement that "at no time was the purpose or content of the Immunity Order explained to him" (Sadin Br. p. 14) is hard to fathom. Promptly after the order had been signed by Judge Duffy and before Sadin was further questioned, the immunity order was read verbatim in the Grand Jury and translated for Sadin by the interpreter. Sadin was then asked whether he understood the order and responded that he did. 7/17/74 Gr.J. Tr. EJC-1. Thereafter Sadin was advised that his continued invocation of the Fifth Amendment privilege would not constitute just cause for his failure to testify, since an order of immunity with respect to his testimony had been obtained (7/17/74 Gr. J. Tr. EJC-3.)*

* Sadin's attorney's reference to Sadin's response to an explanation of Title 28, United States Code, Section 1826 is taken out of context. It omits to mention that both the Assistant United States Attorney and the Court explained the scope and ambit of Section 1826 and Sadin indicated that he understood its meaning.

Sadin further claims that he should have been served with an order to show cause containing specifications upon which the contempt was based, prior to being held in contempt. Precisely the same contention was rejected by this Court in *United States v. Handler, supra*, 476 F.2d at 712-713 (2d Cir. 1973). See also *United States v. Marra, supra*, 482 F.2d at 1202. In *Handler*, the Court held that the civil contempt procedure did not require that the witness receive formal notice in view of the summary nature of the procedure, provided that the witness has actual knowledge of the specific acts for which he was exposing himself to contempt and that he is aware of the confinement terms under Section 1826. The hearing before Judge Duffy on July 17, 1974 makes clear that Sadin was advised as to the questions put to him in which he refused to answer. The Government advised that it was proceeding under Section 1826, and the Court advised Sadin that his refusal to answer the questions put to him could result in his incarceration for a period for the term of the Grand Jury until February 1975. Sadin advised the Court that he would continue to refuse to answer the questions put to him in the Grand Jury. Sadin also stated that he had discussed his appearance with any attorney and that he knew exactly what he was doing. Moreover, and certainly dispositive, it is obvious that when Judge Duffy reconsidered the matter on July 19, Sadin and his counsel were both fully aware of the basis for the claim of contempt and the judicial action prepared to be taken.

Sadin, Brief erroneously states (at pp.14-15):

"When [Sadin] appeared before Judge Duffy, the questions were not read to the Court, the Court did not put them to him and he was never sent back to the Grand Jury to answer them; and no inquiry was made to him as to his reason for refusing to answer. They form no part of the record of the contempt

proceedings. He did not refuse to answer them in the presence of the Court, and it is questionable whether this constitutes contempt."

The Assistant United States Attorney presenting the matter to Judge Duffy began by advising the Court of the questions put to Sadin in the Grand Jury (7/17/74 Ct. Hearing Tr. EJC-2). The Grand Jury's foreman acknowledged the accuracy of the rendition (7/17/74 Ct. Hearing Tr. EJC-3). Judge Duffy then asked:

"Mr. Sadin, certain questions were asked of you this morning. Do you still refuse to answer those questions to the Grand Jury?"

"Witness [through Interpreter]: Yes."

Judge Duffy went on to advise Sadin:

"Mr. Sadin, I want you to understand if you continue to refuse to answer the questions, you can be placed in custody until February 1975 [the remainder of the term of the August 1973 Special Grand Jury]. Under the circumstances, do you still wish to refuse to answer the questions?"

"Witness [through Interpreter]: Yes." (7/17/74 Ct. Hearing Tr. EJC-3-EJC-4.)

Moreover, after holding Sadin in contempt, the Court ordered that a Spanish-speaking attorney be appointed and that Sadin be given the opportunity to return to purge himself promptly of the contempt. The Court's Order and Judgment recited Sadin's right to purge himself of the contempt. (7/17/74 Ct. Hearing Tr. EJC-5-EJC-6). On July 19, 1974, the Government brought Sadin over to the Court-house and was prepared to afford him the opportunity of appearing again before the Grand Jury and testifying (7/19/74 Tr. 16, 17, 40) but Sadin, although then represented by counsel, declined the opportunity (7/19/74 Tr.

17). Moreover, on July 19, Sadin continued his refusal to answer the questions put to him. (7/19/74 Tr. 33-35) and could not and did not furnish the Court with any reason whatsoever that justified his refusal to respond to the questions in the Grand Jury. (7/19/74 Tr. 33-35).

POINT II

Sadin's guilty plea did not absolve him of the duty to furnish testimony in the Grand Jury with respect to a narcotics investigation, after he had been afforded use immunity pursuant to Title 18, United States Code, Sections 6002-6003.

Sadin argues that because he has pleaded guilty to Indictment 74 Cr. 381, charging him with having engaged in a cocaine conspiracy and with having distributed 130 grams of cocaine on November 7, 1972, he was free to disregard the order of immunity and free to refuse to testify in the Grand Jury with respect to his narcotics dealings with his co-defendant Hugo Curbello and with four other named individuals.*

However, *United States v. Wilson*, 488 F.2d 1231 (2d Cir. 1973), *cert. granted*, 42 U.S.L.W. 3625 (May 13, 1974) expressly holds that a defendant who has pleaded guilty to a criminal charge can be granted immunity pursuant to Title 18, United States Code, Sections 6002-6003 and compelled to testify prior to sentence.** Actually, Sadin's

* The Grand Jury was seeking to ascertain from Sadin not only who were the "other persons unknown" in the November 7, 1972 transaction but also what other narcotics transactions Sadin had undertaken with Curbello and with other named individuals about whom he was questioned.

** There is no basis in the record—or anywhere else—for the suggestion in Sadin's Brief at p. 22 that had Sadin testified in the Grand Jury, transcripts of his testimony would have been furnished to the District Court in Ohio in connection with Sadin's sentence. *Cf. United States v. Wilson, supra.*

guilty plea, if anything, makes it more appropriate that he be summoned to the Grand Jury, since there are cases holding or suggesting that a plea of guilty waives the privilege against self-incrimination.* See *United States v. Sanchez*, 459 F.2d 100, 103 (2d Cir.), *cert. denied*, 409 U.S. 864 (1972); *United States v. Gernie*, 252 F.2d 664, 670 (2d Cir.), *cert. denied*, 356 U.S. 968 (1958); *United States v. Gloria*, 494 F.2d 477, 480 (5th Cir. 1974); *United States v. Dowdy*, 486 F.2d 1042 (5th Cir. 1973); *but cf.*, *United States v. Wilson*, *supra*, 488 F.2d at 1233 n. 3. See also *United States v. Domenech*, 476 F.2d 1229, 1231 (2d Cir. 1973). In any event since Sadin had been afforded "use" immunity pursuant to Title 18, United States Code, Sections 6002-6003, his right to assert a Fifth Amendment privilege no longer existed. *Kastigar v. United States*, 406 U.S. 441 (1972).

Sadin's refusal to testify and the resulting contempt clearly did not involve a double jeopardy situation for two reasons. The gist of the contempt based on Sadin's refusal to testify was entirely different from the November 7, 1972 narcotics transaction to which Sadin had previously pleaded guilty. *United States v. McCall*, 489 F.2d 359, 362 (2d Cir. 1973). Moreover, the contempt procedure provided by Title 28, United States Code, Section 1826, is civil and remedial and not penal in nature, *Shillitani v. United States*, 384 U.S. 364, 369-371 (1966), and, therefore, would not call

* The decision to have Sadin go before the Grand Jury and afford him a grant of use immunity, after his guilty plea, not only was proper as a matter of law, but also was appropriate in the public interest insofar as the social cost involved in permitting a narcotics offender to go unpunished was eliminated, and the thorny legal issues that could have been caused by putting Sadin into the Grand Jury prior to a possible plea were thereby avoided. See *Kastigar v. United States*, 406 U.S. 441 (1972). Compare Note, *Standards for Exclusion in Immunity Cases after Kastigar and Zicarelli*, 82 Yale L. J. 171, 180-182 (1972).

into play the Double Jeopardy Clause.* See *United States v. Marra, supra*, 482 F.2d at 1202.

CONCLUSION

The order and judgment of civil contempt should be affirmed.

Respectfully submitted,

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*United States Attorney for the
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* Sadin's reliance on *In re Vericker*, 446 F.2d 244 (2d Cir. 1971) and *United States v. Dinsio*, 368 F.2d 1392 (9th Cir. 1972) is misplaced. As *United States v. Handler, supra*, 476 F.2d at 714 (2d Cir. 1973) pointed out, the immunity in *Vericker* had been granted under a more restrictive statute, Title 18, United States Code, Section 2514. Moreover, since Sadin has never challenged the propriety of questions put to him, there was no need for the Government to prove legitimacy or materiality, *United States v. Handler, supra*, though both are readily apparent. Similarly, *Dinsio* is readily distinguishable because Sadin completely and utterly failed to make any showing of "just cause." *United States v. Handler, supra*.

For
SA
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AFFIDAVIT OF MAILING

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

John D. Gordon III
~~STEVEN A. SCHATTEN~~

being duly sworn,
deposes and says that he is employed in the office of the
United States Attorney for the Southern District of New York.

That on the 12th day of August, 1974
he served ^{2 copies} a copy of the within brief for the U.S.A.
by placing the same in a properly postpaid franked envelope
addressed:

Helena Pichel Solleder, Esq.
19 Rector Street
New York, N.Y. 10004

And deponent further says that he sealed the said envelope
and placed the same in the mail drop for mailing in
the United States Courthouse, Foley Square,
Borough of Manhattan, City of New York.

John D. Gordon III
~~STEVEN A. SCHATTEN~~ *John D. Gordon III*
Assistant United States Attorney

Sworn to before me this

12th day of August, 1974.

Gloria Calabrese

GLORIA CALABRESE
Notary Public, State of New York
No. 24-0535340
Qualified in Kings County
Commission Expires March 30, 1975